

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

CONSTANCE SMITH, )  
Plaintiff, )  
v. )  
HENRY QUEENER and ) JUDGE CRENSHAW  
STATE FARM INSURANCE COMPANY, ) MAGISTRATE JUDGE BROWN  
Defendant. )

## ORDER

Presently pending is the Plaintiff's Motion to Dismiss the Defendant Henry Queener without prejudice and to set a hearing on the matter. This issue was discussed at the Case Management Conference on November 13, 2019. For the reasons stated below, the Magistrate Judge recommends the motion be granted and Mr. Queener be dismissed from this case without prejudice.<sup>1</sup> Further that the motion to withdraw the motion be terminated as moot.

## I. Background

This case is primarily an action by Ms. Smith to set aside a settlement she entered into resolving an automobile accident which occurred on August 13, 2013 in Nashville. A lawsuit was filed in state court and subsequently mediated by the Honorable John Tarpley. On June 26, 2015 counsel for the parties filed a Stipulation of Dismissal and on August 3, 2015 Ms. Smith executed

<sup>1</sup> Prior to the scheduling conference Mrs. Smith filed a motion (DE 19) to resend her motion to dismiss Mr. Queener (DE 6). At the conference Mrs. Smith agreed that Mr. Queener could be dismissed WITHOUT PREJUDICE. No other party objected to a dismissal without prejudice. She had filed the motion to rescind because of a misunderstanding of some of the pleadings that followed her original motion to dismiss him. Of course, if there is no diversity jurisdiction this motion will be moot in any case.

a release and confidentiality agreement releasing State Farm and other individuals from all claims arising out of the August 13, 2013 motor vehicle accident. Mr. Queener represented Ms. Smith in that action. In the present case, which was originally filed in state court and removed to this court by State Farm. Ms. Smith contends there was fraud in the settlement and attempts to set it aside.

During the Case Management Conference counsel for Mr. Queener pointed out he had never been officially served however, his counsel agreed they had no opposition to his dismissal without prejudice. State Farm also concurred they had no objection to his dismissal without prejudice.

Under Rule 41A the Plaintiff may dismiss without a court order by filing a Notice of Dismissal before the opposing party serves either an Answer or a Motion for Summary Judgment. In this case, Mr. Queener has neither filed an Answer or Motion for Summary Judgment, accordingly although an order is not technically needed the undersigned recommends the case against Mr. Queener be dismissed without prejudice.

## **II. Recommendation**

For the reasons stated above, the Magistrate Judge recommends the Plaintiff's Motion to Dismiss Without Prejudice be granted , the motion (DE 19) to withdraw that motion be terminated as moot and Mr. Queener be accordingly dismissed without prejudice.

Any party has fourteen (14) days from receipt of the Report and Recommendation in which to file any written objections to it with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in which to file any responses to said

objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation.

/s/ Joe B. Brown  
Joe B. Brown  
United States Magistrate Judge